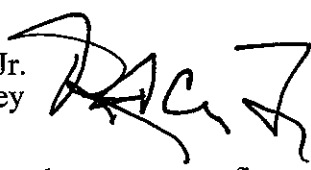


# Memorandum



**Date:** February 25, 2010

**To:** Honorable Commissioner Rebeca Sosa  
District 6

**From:** R. A. Cuevas, Jr.  
County Attorney 

**Subject:** Legal issues attendant to current financial exigencies at PHT

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You have inquired about the legal responsibilities of the County to the Public Health Trust ("PHT") and Jackson Health System.

## LEGAL RELATIONSHIP OF THE PHT TO THE COUNTY:

The County owns Jackson Memorial Hospital ("JMH") and related facilities in the Jackson Health System. It has transferred possession and operating control of these facilities in trust to the "PHT". The beneficiaries of the trust are "the people of Miami-Dade County who, with regard to the Trust, shall be represented only by the Board of County Commissioners." Sec. 25A-7 of the Code of Miami-Dade County. The PHT is an agency and instrumentality of the County.

The PHT has the power to enter into contracts, which as a general matter are not binding on the County. Sec. 25A-4(c) of the Code.<sup>1</sup> The PHT cannot, without prior approval of the County Commission: change the contractual relationship with the University of Miami; enter into any contract the effect of which is to change substantially the health care delivery policies established by the County; or, enter into a contract with any labor union. *Id.* Because the PHT does not have the independent authority to enter into a labor contract, the County, as a matter of state labor law, is a party to and is bound by the contracts with the PHT's labor unions.

The County is obligated to make certain payments related to the operation or capital needs of the designated facilities operated by the PHT. The County has levied a half cent county public hospital sales surtax the proceeds of which must be utilized for the operation, maintenance and administration of JMH. As a condition of levying the surtax, the County is required to contribute each year a sum of money (maintenance of effort) that is no less than 80 percent of the general fund support provided for the operation of JMH at the time the surtax was levied.

The County has issued revenue bonds for the benefit of the PHT which are secured by certain PHT revenues and by a pledge from the County to replenish certain shortfalls through annual appropriation from legally available, non-*ad valorem* revenues.

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<sup>1</sup> There may be instances where, because of the inconclusive status of the law, arguments could be advanced that the County has liability for a particular PHT obligation.

The County has also entered into various Sunshine State loans for certain improvements and equipment for the designated facilities. These loans are secured by and paid from annual appropriation by the County from legally available, non-*ad valorem* revenues.

ENSURING CONTINUED LOCAL CONTROL OVER THE OPERATION OF JMH AND RELATED JACKSON HEALTH SYSTEM FACILITIES:

The question has arisen whether the current financial exigencies of the PHT could jeopardize local control over the operation of JMH and other Jackson Health System facilities.

Neither the County nor the PHT can be involuntarily subjected to the jurisdiction of the federal bankruptcy court. This means that unpaid creditors cannot initiate proceedings in bankruptcy court for the benefit of such creditors.

Chapter 218, Florida Statutes, does provide a state procedure whereby the Governor can initiate oversight of a local governmental entity experiencing a financial emergency if certain statutory conditions are met. Among the statutory conditions that could trigger such oversight are: the failure to pay uncontested claims from creditors within 90 days after being presented as a result of lack of funds; and, the failure for one pay period to pay wages and salaries owed to employees due to lack of funds.

The local governmental entities subject to state oversight under Chapter 218 are a "county, municipality or special district." While the PHT is an agency and instrumentality of the County, it is not clear whether the Governor would consider the PHT to be a part of the County for purposes of Chapter 218. There are no reported cases or Attorney General Opinions holding that an agency or instrumentality of a county is subject to the state oversight process, nor are there any cases or opinions holding that an agency or instrumentality of a county is not subject to the oversight process. Thus, it is unclear whether the Governor would conclude that the PHT could be subjected to the state oversight process if one of the statutory conditions were claimed to exist, or whether a court reviewing a gubernatorial decision to that effect would concur in that decision.

If the Governor concludes the PHT is subject to state oversight, the Governor could implement "assistive measures," including but not limited to: inspecting the local government entity's assets; requiring approval of the local governmental entity's budget; prohibiting the local governmental entity from issuing additional forms of debt; and/or requiring an operational plan that prohibits a level of operations which can be sustained only with nonrecurring revenues.

Expedient development of a plan to address the current financial exigencies at the PHT affords the best assurance for continued local control over the operations of JMH and related Jackson Health System facilities.

c: Hon. Chairman Dennis C. Moss  
and Members, Board of County Commissioners  
Hon. Carlos Alvarez, County Mayor  
George M. Burgess, County Manager  
Dr. Eneida Roldan, President and CEO, Jackson Health System  
John C. Copeland, Chairperson, PHT  
Alina T. Hudak, Assistant County Manager